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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911
20999 7590 01/12/2010 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER PIZIALI, ANDREW T	
			ART UNIT 1794	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,459	Applicant(s) LEVINE ET AL.	
	Examiner Andrew T. Piziali	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 23-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 9-12, 24, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6-8, 13, 23, 25-27 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/14/04 & 3/23/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendments filed on 7/17/2009 and 11/25/2009 have been entered.

Election/Restrictions

2. The petition decision dated 12/24/2009 ruled that the final rejection of 8/25/2009 is incomplete for failing to examine claims 1, 2, 4, 6-8 and 13 and vacated the final rejection mailed 8/25/2009. Therefore, the examiner has examined previously withdrawn claims 1, 2, 4, 6-8 and 13 in this corrected final rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 23, 25-27 and 31 are rejected under 35 U.S.C. 102(b) as anticipated by USPN 5,857,497 to Gaisser in view of (to show inherency) WO 01/88261 to Strandqvist.

Gaisser discloses a water permeable papermaking machine support fabric comprising rectangular (flat) filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50).

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Gaisser does not specifically mention using the fabric as claimed, but Strandqvist discloses that a water permeable papermaking machine support fabric is capable of being used as a hydroentangling support fabric, in a hydroentangling apparatus, for the production of a hydroentangled nonwoven product (see entire document including page 1, lines 4-5 and page 4, lines 7-18). Therefore, the fabric of Gaisser is inherently capable of being used as claimed.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a

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product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31 are rejected under 35 U.S.C. 103(a) as obvious over WO 01/88261 to Strandqvist in view of USPN 5,857,497 to Gaisser.

Strandqvist discloses a hydroentangling apparatus comprising an endless water permeable hydroentangling support member, for the production of a hydroentangled nonwoven product, wherein the support member comprises rectangular cross-sectional shape components (see entire document including the Figures, page 1, lines 4-5, page 3, lines 13-25, and page 5, lines 4-11).

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Strandqvist does not specifically mention the use of a support member fabric with rectangular filaments, but Strandqvist does disclose that it is known in the hydroentangling art to use a water permeable papermaking support member as a hydroentangling support member (page 2, lines 24-30 and page 4, lines 7-18). Gaisser discloses a water permeable papermaking machine support fabric comprising rectangular (flat) filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Gaisser discloses that the support member has increased structural stability in the machine direction while still affording a high degree of permeability (column 1, lines 11-35). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the support member of Strandqvist with the support member of Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

The substitution of known equivalent structures involves only ordinary skill in the art. *In re Fout* 213 USPQ 532 (CCPA 1982); *In re Susi* 169 USPQ 423 (CCPA 1971); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *In re Ruff* 118 USPQ 343 (CCPA 1958). When a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result. *KSR v. Teleflex*.

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If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. One must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *KSR v. Teleflex*.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7 and 8, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

Regarding claim 13, Gaisser discloses that the permeability of the support fabric is greater than 350 cfm (column 4, lines 50-60).

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either

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anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

7. Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of USPN 5,857,497 to Gaisser.

Greenway discloses an endless hydroentangling support fabric in a hydroentangling apparatus for the production of a hydroentangled nonwoven product (see entire document including column 4, lines 33-46 and Figure 1). Greenway discloses the use of support fabric round filaments (Table I), but Greenway is silent with regards to the use of support fabric flat filaments. Gaisser discloses that it is known in the support fabric art to use a support fabric comprising flat filaments (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the filaments of Gaisser for the filaments of Greenway, because the substitution of known equivalent structures involves only ordinary skill in the art. *In re Fout* 213 USPQ 532 (CCPA 1982); *In re Susi* 169 USPQ 423 (CCPA 1971); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *In re Ruff* 118 USPQ 343 (CCPA 1958). When a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result. *KSR v. Teleflex*.

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Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7 and 8, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

Regarding claim 13, Gaisser discloses that the permeability of the support fabric is greater than 350 cfm (column 4, lines 50-60).

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

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8. Claims 23, 25-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight.

Elsener discloses a fabric comprising flat filaments (see entire document including column 3, lines 40-47). Elsener discloses that the fabric is preferably a roller hand towel (column 3, lines 56-62). Elsener does not appear to specifically disclose that the roller hand towel is in a continuous loop or made endless, but Schwartz and Whight each disclose that it is known in the roller hand towel art to use an endless fabric (see entire documents including column 1, lines 4-23 and column 2, lines 43-45 of Schwartz and column 1, lines 4-45 of Whight). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric in any suitable shape, such as an endless fabric, because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

Elsener does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of

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production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Response to Arguments

9. Applicant's arguments filed 4/3/2009 and 11/25/2009 have been fully considered but they are not persuasive.

Regarding the restriction requirement submitted on 8/25/2009, the applicant requests that the final office action be reissued with withdrawn claims 1, 2, 4, 6-8, and 13 examined.

Applicants requested has been granted.

Regarding claims 23, 25-27 and 31, the applicant asserts that Gaisser's water permeable papermaking fabric is not designed for hydroentangling. Applicant's argument is not persuasive because although Gaisser does not specifically mention using the fabric as claimed, Strandqvist discloses that a similarly shaped water permeable papermaking machine support fabric is capable of being used as a hydroentangling support fabric, in a hydroentangling apparatus, for the

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production of a hydroentangled nonwoven product (see entire document including page 1, lines 4-5 and page 4, lines 7-18). Therefore, the fabric of Gaisser is inherently capable of being used as claimed.

Regarding claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31, the applicant asserts that it would not have been obvious to combine the teachings of Gaisser and Strandqvist because Gaisser relates to a support fabric that may be used as a dryer fabric while Strandqvist relates to a support fabric that is used as a press fabric. Applicant's argument is not persuasive. Firstly, Gaisser discloses that a dryer fabric performs a pressing function (column 4, lines 21-29). Secondly, both references clearly relate to papermaking support fabrics, regardless of which section of the papermaking machine they are used. Thirdly, it is clear that the support member illustrated in Figure 2 of Strandqvist is substantially similar in shape to the rectangular filament support member disclosed by Gaisser because both support members are highly permeable and both comprise rectangular cross-sectional shape components.

Regarding Greenway in view of Leuvelink, the examiner has withdrawn said rejection.

Regarding Bunting in view of Denton, the examiner has withdrawn said rejection.

Regarding Elsener in view of Schwartz or Whight, the applicant asserts that one skilled in the art would not be motivated to use a hand towel in a hydroentangling machine. Applicant's argument is not persuasive because a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

10. Applicant's amendment filed 7/17/2009 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/

Primary Examiner, Art Unit 1794